REMARKS

Claims 1 through 5 are currently pending in the application.

This amendment is in response to the final Office Action of March 8, 2005.

35 U.S.C. § 112 Claim Rejections

Claims 1 through 5 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants respectfully traverse this rejection, as hereinafter set forth.

Applicants assert that claims 1 and 5 clearly comply with the provisions of 35 U.S.C. § 112, first paragraph, as paragraph [0045] of the specification taken in conjunction with drawing Fig. 6 states that ' . . . the secondary sidewall spacers 28 may be further etched, resulting in third spacers 29 of thickness intermediate to the first and second spacers (28 which include the layer of dielectric material forming a layer of dielectric material on the first sidewall and second sidewall and the single layer sidewall spacer having a second thickness greater than the first thickness of the dielectric material overlying the first sidewall and the second sidewall)." Applicants assert that such a description of the claimed invention clearly complies with the provisions of 35 U.S.C. § 112, first paragraph. Therefore, claims 1 through 5 are allowable under 35 U.S.C. § 112.

Claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Applicants have canceled claim 3.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on Jin et al. (U.S. Patent 6,350,665) in view of Lin et al. (U.S. Patent 6,187,645)

Claims 1 through 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jin et al. (U.S. Patent 6,350,665) in view of Lin et al. (U.S. Patent 6,187,645). Applicants

respectfully traverse this rejection, as hereinafter set forth.

Applicants assert that to establish a *prima facie* case of obviousness under 35 U.S.C. § 103 three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure.

Applicants assert that any combination of the Jin et al. reference and the Lin et al. reference cannot and does not establish a *prima facie* case of obviousness under 35 U.S.C. § 103 regarding the presently claimed invention of presently amended independent claim 1 because, at the very least, any combination of the cited prior art fails to teach or suggest all of the claim limitations.

Turning to the cited prior art, the Jin et al. reference teaches or suggests a method of manufacturing a semiconductor device which includes forming diffusion regions in a substrate with a gate, first spacer and second spacer as a diffusion mask. The second space may then be removed prior to the formation of an interlayer dielectric. An interlayer dielectric may then be formed over a gate structure and first spacer. A contact hole may then be etched through the interlayer dielectric that is self-aligned with the gate.

The Lin et al. reference teaches or suggests a method of manufacturing a semiconductor device including providing a substrate that has a gate structure thereon, and then forming offset spacers on the sidewalls of the gate structure. Thereafter, a thin oxide annealing operation is conducted and a first ion implantation using the gate structure and the offset spacers as a mask to form lightly doped drain regions in the substrate. Secondary spacers are formed on exterior sidewalls of the offset spacer and a second ion implantation is carried out using the gate structure, the offset spacers, and the secondary spacers as a mask to form source drain/regions within the lightly doped drain regions.

Applicants assert that any combination of the Jin et al. reference and the Lin et al. reference fails to teach or suggest the claim limitations of presently amended independent claim 1

calling for "depositing a conformal layer of dielectric material having a first thickness over the substrate", "subjecting the layer of dielectric material on the first sidewall and the second sidewall to an annealing/oxidation process", "forming a single layer sidewall spacer having a second thickness greater than the first thickness of the dielectric material overlying the first sidewall and the second sidewall", and "forming another single layer sidewall spacer overlying the single layer sidewall spacer, the another single layer sidewall spacer having a third thickness intermediate the first thickness of the dielectric layer and the second thickness of the single layer sidewall spacer". Therefore, presently amended independent claim 1 is allowable as well as dependent claim 5 therefrom.

35 U.S.C. § 101 Double Patenting Rejection

Claims 1 through 5 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 16 through 20 of prior U.S. Patent No. 6,383,881 (hereinafter referred to as the `881 patent). Applicants respectfully traverse this rejection, as hereinafter set forth.

Applicants assert that a reliable test for statutory double patenting under 35 U.S.C. § 101 is whether a claim in the application can be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment of the invention, then identical subject matter is not defined by both claims and statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel,* 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Applicants assert that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiment of the invention set forth in presently amended independent claim 1 of the present application and corresponding claim 16 of the `881 patent because different embodiments of the invention are being claimed. For instance, the embodiment of the invention set forth in presently amended independent claim 1 of the present application contains elements of the invention calling for "forming a single layer sidewall spacer having a second thickness greater than the first thickness of the dielectric material overlying the first sidewall and the second sidewall" and "forming another single layer sidewall spacer overlying the single layer sidewall spacer, the another single layer sidewall spacer having a third thickness intermediate the first thickness of the dielectric layer and the second thickness of the single layer sidewall spacer"

whereas corresponding independent claim 16 of the `881 patent does not.

Accordingly, no statutory double patenting under 35 U.S.C. § 101 exists between the embodiment of the invention set forth in presently amended independent claim 1 of the present application and the embodiment of the invention set forth in corresponding claim 16 of the `881 patent. Therefore, presently amended independent claim 1 is allowable as well as dependent claim 5 therefrom.

Applicants request entry of this amendment for the following reasons:

The amendment is timely filed.

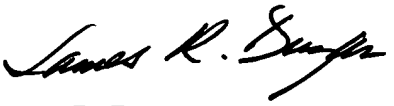
The amendment places the application in condition for allowance.

The amendment does not require any further search or consideration.

Applicants submit that claims 1 and 5 are clearly allowable under 35 U.S.C. § 112, allowable over the cited prior art, and allowable under 35 U.S.C. § 101.

Applicants request the allowance of claims 1 and 5 and the case passed for issue.

Respectfully submitted,



James R. Duzan
Registration No. 28,393
Attorney for Applicants
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: May 9, 2005
JRD/dlm:lmh

Document in ProLaw